

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:16-cr-00221

MICHAEL KOSTENKO, D.O.,

Defendant.

ORDER

On August 15, 2017, the Court entered an order requiring the parties to submit lists of witnesses for the Defendant's sentencing hearing, scheduled for August 23, 2017, as well as the topic(s) on which each witness is expected to testify. (Document 137.) Upon review of the Defendant's witness list, the Court finds that the topics on which several witnesses would testify are not relevant to any sentencing factors.

Wherefore, after careful consideration, the Court **ORDERS** that the following witnesses be precluded from testifying: Dr. Rahul Gupta;¹ Dr. James Becker; Dr. Mohammed Ranavaya; Dr. Ernest Miller; and Dr. Kendall Wilson. Their proposed testimony centers on general concerns regarding the medical community and/or the standard of care, rather than any information relevant to the facts and circumstances of this case or the Defendant's conduct or character. In addition, Susan Adkins is listed as a witness who will testify about her experiences as a patient of Dr.


¹ The Court notes that Magistrate Judge Aboulhosn entered an order (Document 140) granting a motion to quash the subpoena issued as to Dr. Rahul Gupta and Mr. Steven Compton.

Kostenko. Ms. Adkins submitted a letter in support of the Defendant, which the Court has reviewed. The Court **ORDERS** that the Defendant offer her testimony only to the extent she will offer different relevant information beyond that which the Court has previously reviewed. The Court further **ORDERS** that counsel for the Defendant promptly notify the above-listed proposed witnesses of this Order.

The Defendant also supplied a list of proposed exhibits. The Court **ORDERS** that (1) the videos of Classes 1 and 10, and (2) handouts distributed in conjunction with the Defendant's class lectures, be provided to the Court **no later than 12:00 noon on Tuesday, August 22, 2017**. The Court will review those materials prior to sentencing and consider the same, but will not permit the playing of videos during the hearing. Finally, the Court finds that (3) "Document authored by defendant which set forth defendant's issues with the state of medical practice;" and (4) "the Social Justice Amendment, which is proposed legislation authored by Defendant," have no relevance to any sentencing factor. Accordingly, the Court **ORDERS** that those documents be **EXCLUDED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: August 21, 2017


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA